

Violent Crime Resulting In Serious Injury In Positive Law

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Abstract

This study aims to determine, assess, and analyze the rights of child victims of acts criminal persecution resulting in serious injury in Indonesia. Research methods used in this study is a normative legal research that is prescriptive. Research approach used is the law related to the legal protection of children who become victims of criminal acts of persecution that resulted in serious injuries such as The Book Of Law Criminal law, Child Protection Act, witness and Victim Protection Act, Law on juvenile criminal justice system and the Code of Criminal Procedure. Types the data used are primary data and secondary data. Data collection techniques using library study techniques. Data analysis used is a deductive analysis technique. This research concluded that the rights of children victims of abuse resulting in serious injury provided for in the Child Protection Act, The Witness and Victim Protection Act, and the juvenile justice system. But the implementation of protection of rights- rights of child victims of abuse that resulted in serious injury is still not optimal especially in the case of prosecution for damages due to criminal acts experienced by children.

Keywords: Violen; Law, Resulting

1. INTRODUCTION

Indonesia is a country that upholds values in social life. One of its values is Concord. Harmony is the condition and process of creating and maintaining diverse patterns of interaction between autonomous units. Harmony reflects a mutual relationship characterized by mutual acceptance, mutual trust, mutual respect and appreciation as well as an attitude of togetherness.¹

Harmony is also defined as a life together that is colored by a harmonious and peaceful atmosphere, living in harmony means not having conflicts, but united in heart and agreed in thinking and acting in order to realize common prosperity. In harmony everyone can live together without any suspicion, where growing mutual respect and willingness to cooperate for the sake of common interests. Harmony or living in harmony is an attitude that comes from the deepest heart emanating from the willingness

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¹ Ridwan Lubis, *Cetak Biru Peran Agama*, Jakarta: Puslitbang, 2005, pp..7-8

to interact with each other as human beings without pressure from any party. the current community life still does not apply the values of harmony, causing crimes that arise in community life. Prominent crimes are crimes against the "people".²

Crimes against the "person" in the Criminal Code include the following; honor (humiliation), revealing secrets, personal freedom or Independence, life, body or body, property or wealth.³ scholars generally combine these matters into "crimes against the soul and body", which in the Penal Code are regulated systematically as follows; crimes against the soul of the person are written in Chapter XIX, persecution in Chapter XX, and causing death or injury to the person by mistake or negligence in Chapter XXI.⁴

The Central Statistics Agency noted that during the period 2018-2020 the number of crime or crime in Indonesia tends to decrease. The total number of crime incidents in 2018 was 294,281. This figure decreased to 269,324 incidents in 2019 and in 2020 to 247,218 incidents. The crime rate indicator during the 2018-2020 period also decreased, in 2018 it amounted to 113, to 103 in 2019, and decreased to 94 in 2020. The time lapse of a crime (crime clock) is equal to 00.01'47' (1 minute 47 seconds) in 2018 and to 00.01'57' (1 minute 57 seconds) in 2019 and 00.02 ' 07' (2 minutes 07 seconds) in 2020. The longer crime clock Interval shows the decreasing intensity of crime. Survey Data describing the percentage of residents who became victims of crime during the period 2019-2020 also showed the same pattern as the registration data, which tended to decrease. The percentage of the population of victims of crime decreased from 1.01 percent in 2019 to 0.78 percent in 2020. Meanwhile, the rate of reporting to the police (police report rate) each year is still relatively low. In the period 2019-2020, the percentage of the Indonesian population who experienced a crime incident and then reported it to the police was no more than 25 percent. In 2020, the percentage was 23.46 percent, a slight increase when compared to 2019 (22.19 percent). In addition to crime incidence data sourced from data with an individual approach, crime incidence can be seen based on the scope of the region with village-based. Based on the village potential data collection, during the period 2011- 2018, the type of theft incident was the most common crime in villages in Indonesia, the number reached more than 36-45 percent of all villages.⁵

² Faisal Ismail. *Dinamika kerukunan Antar Umat Beragama*, Bandung: PT. Remaja Rosdakarya, 2014, pp. 1

³ Leden Marpaung, *Tindak Pidana Terhadap Nyawa Dan Tubuh* , Jakarta: Sinar Grafika, 2002, pp. 2.

⁴ *Ibid*, pp. 2

⁵ <https://www.bps.go.id/publication/2021/12/15/8d1bc84d2055e99feed39986/statistik-kriminal-2021.html> diakses tanggal 27 Mei 2022

The phenomenon of acts of persecution is not new in acts of physical and psychological violence, and can be found everywhere such as in the household or family, in public places, and in other places and can happen to anyone when faced with a problem with others. Observing the phenomenon of persecution that occurs, it seems that it is not just a thing that happens but is allegedly related to various factors such as the influence of association and delinquency, thuggery, social jealousy, pressure and economic disparities disharmony in domestic relations or with others, competition, conflicts of interest, as well as in debt-debt relations and others.

In some cases, some people or groups of people intentionally mistreat others due to factors such as resentment, defamation, feeling betrayed or harmed, feeling that their self-esteem and dignity are degraded or abused and other motives. In addition, not a few people are also involved in disputes, fights or quarrels that encourage them to abuse unintentionally.

Based on the description of the background of the problem, encourage authors to conduct research and for that interested in choosing the title Violent Crime Resulting In Serious Injury In Positive Law

2. RESEARCH METHOD

The research method in this paper is carried out with of normative legal research or also known as research doctrinal. The nature of the research used is prescriptive legal research. Research approach this is done by the approach of legislation (statute approach), namely the law related to legal protection of children who are victims of abuse which resulted in serious injuries such as the Constitution of the Republic of Indonesia year 1945, Code of Criminal Law (KUHP), Code of Criminal Procedure (KUHAP), Law No. 17 of 2016 on amendments to the Act No. 23 of 2002 on Child Protection, Law No. 31 of 2014 on amendment to Law No. 13 of 2006 on witness and Victim Protection, as well as Law No. 11 of 2012 on juvenile criminal justice system. Sources of research in the form of primary legal materials and secondary legal materials. Legal materials primary consists of legislation, official records that are authoritative Criminal Procedure Code, Criminal Code, Child Protection Act, witness and Victim Protection Act, Justice System Act Child Criminal. And secondary legal materials are books written by jurists, law journals, articles and materials from the internet media.

3. RESULT AND ANALYSIS

In terms of grammar, persecution is an invented word or adjective derived from the root word "persecution" which gets the prefix "pe" and the suffix "an" While the persecution itself comes from a noun derived from the word persecution that indicates the subject or perpetrator of the

persecution. In the Indonesian general dictionary says that persecution is arbitrary treatment (torture, oppression, and so on).⁶

Tirtaamidjaja makes the meaning of "persecution "as follows:" to persecute is to intentionally cause pain or injury to another person. However, an act that causes pain or injury to another person, can not be considered as persecution if it is done to increase the safety of the body. Then science (doctrine) defines persecution as, "any act done intentionally to inflict pain or injury on another person".⁷

According to H.R. (Hooge Raad) persecution is: "any act that is done intentionally to cause pain or injury to another person, and is solely the purpose of that person and the act must not be a means to achieve a permitted purpose"

While jurisprudence defines persecution as intentionally causing unpleasant feelings (suffering), pain (pijn), or injury. Unpleasant feelings, for example, encourage people to plunge into kali so that it is wet or can also tell people to stand in the hot sun. While the pain that is meant here, for example, pain that arises from pinching, duping, hitting or sticking. As for wounds, they can be in the form of cuts, cuts, or stab wounds with a knife.⁸

Mistreatment is prohibited in criminal law because it results in injury, serious injury and even death. For this reason, the Criminal Code has been formulated and threatened with various ways and consequences of actions that cause serious injury.

In the Criminal Code now in force, the provisions governing criminal acts against the human body are contained in chapters XX and XXI. In general, criminal acts against the human body are of two kinds, namely:

- a) Criminal acts against the body committed intentionally or mistreatment, which include: Ordinary persecution as stipulated in Article 351 of the Criminal Code, mild persecution as stipulated in Article 352 of the Criminal Code, planned persecution as stipulated in Article 353 of the Criminal Code, severe persecution as stipulated in Article 354 of the Criminal Code, planned severe persecution as stipulated in Article 355 of the Criminal Code and persecution of certain qualified persons as stipulated in Article 356 of the Criminal Code.
- b) Unintentionally committed crimes against the body, which include only one type of criminal offense, namely the criminal offense provided for in Article 360, the criminal offense is popularly known as the

⁶ W.J.S Poerwadarminta, *Kamus Umum Bahasa Indonesia*, Jakarta: Balai Pustaka, 1994, pp.48

⁷ <https://www.hukumonline.com/klinik/a/perbuatan-perbuatan-yang-termasuk-penganiayaan-lt515867216deba> diakses tanggal 26 Mei 2022

⁸ R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-komentarnya Lengkap Pasal Demi Pasal* Bogor: Politea, 1998, pp. 245

qualification because its negligence causes another person to be injured.

Furthermore, to provide a clearer picture of the type of crime, below will be described one by one type of crime :

- a) Ordinary persecution
- b) Minor persecution
- c) Persecution plans
- d) Severe persecution
- e) Severe persecution plans

When examined carefully, it can be seen that the provisions of Article 356 of the Criminal Code are provisions that aggravate various persecutions, namely ordinary persecution as stipulated in Article 351 planned persecution as stipulated in Article 353, severe persecution as stipulated in Article 354 and severe persecution planned as stipulated in Article 355 of the Criminal Code.

Criminal law is the law that determines the criminal act and determines the guilt for the offender (the substance of the criminal law) and the law that determines the implementation of the substance of the Criminal Law (Criminal Procedure Law). In Indonesia, criminal law is divided into two kinds, namely collected in a book of codification (KUHP) which is a general criminal law and scattered in various laws on certain matters, which is a Special Criminal Law.⁹

The crime of persecution resulting in serious injury can be found in the provisions of the Criminal Code, which are qualified as persecution provided for in Chapter XX of the second book of the Criminal Code.

Article 351 formulates: (1) Persecution shall be punished with a maximum imprisonment of 2 years and 8 months or a maximum fine of Rp. 4500 (2) if the ACT results in serious injuries, the guilty shall be punished with a maximum imprisonment of 5 years. (3) if it results in death, shall be punished with a maximum imprisonment of 7 years. (4) by ill-treatment is equated to deliberate damage to health. (5) the attempt to commit this crime is not punishable.

The crime of mistreatment resulting in grievous bodily harm is regulated in Article 351 paragraph (2) which reads : “If the ACT results in grievous bodily harm, the guilty shall be punished with imprisonment for a maximum of 5 years.”

As for the elements contained in the article, namely subjective elements and objective elements , another element that is no less important in the formulation of the crime of persecution in the principal form is the element

⁹ Maidin Gultom, *Perlindungan Hukum Terhadap Anak dan Perempuan*, Bandung: Refika Aditama, pp. 3.

of serious injury or element *zwaar lichamelijk letsel*, which is contained in the formulation of Article 351 and Article 353 of the Criminal Code. Article 90 of the Penal Code has incorporated several circumstances into the sense of grievous bodily harm or into the sense of *zwaar lichamelijk letsel*, as follows: a. Diseases or injuries that cannot be expected to heal completely or that pose a danger to life, b. Inability to carry out office or work activities continuously, c. Loss of use of one of the senses, e. Disruption of common sense for more than four weeks and f. Miscarriage or death of a fetus in a woman's womb. d. Paralysis,

4. CONCLUSION

Regulation of legal protection of children related to children is contained in Article 13 paragraph (1) of Law No. 23 of 2002 on Child Protection ("Child Protection Law") as amended by Law No. 35 of 2014 on amendments to Law No. 23 of 2002 on Child Protection ("Law 35/2014"). Where the article that ensnares perpetrators of child abuse is specifically contained in Article 76C of Law/35 2014, while, sanctions for people who violate the above article (perpetrators of violence/peganياهو) are determined in Article 80 of law 35/2014: regulation of legal sanctions for crimes of violence against children resulting in serious injury is regulated in Article 80 paragraph (2) of law 35/2014 which states that in the case of rp100, 000, 000.00 (one hundred million rupiah).

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